The original documents are located in Box 4, folder "Antitrust - Senate Omnibus Legislation" of the John Marsh Files at the Gerald R. Ford Presidential Library.

THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

February 19, 1976

Honorable Hugh Scott
United States Senate
Washington, D. C. 20510

Dear Senator Scott:

When the Subcommittee on Antitrust and Monopoly held hearings on S. 1284 during the spring and summer of 1975, the Administration expressed support for the major provisions of the bill, although it generally opposed Title VI. There has been division within the Administration, however, regarding the desirability of Title V, and the Administration position has been reconsidered in light of the scheduled consideration of the bill by the full Judiciary Committee.

Although the Administration adheres to its previously expressed position on other provisions of S. 1284, and particularly Title II of the bill, this letter is to inform you that the Administration does not now support Title V in its present form.

The Administration does not support enactment of the premerger stay provision of Title V, preferring instead to rely upon existing decisional and statutory law to govern the issuance of preliminary injunctions in merger actions filed by the Department of Justice and the Federal Trade Commission.

The Administration continues to support enactment of a premerger notification provision, providing that the waiting period and extension period are reduced to 30 days and 20 days respectively. Furthermore, to assure that challenges to pending mergers are considered on an expedited basis by district courts, the Administration would encourage enactment of a provision directing the Chief Judge of the appropriate United States Court of Appeals to assign a District Court judge who is able to proceed on an expedited basis with the case, and further to direct that a hearing on the government's motion for a preliminary injunction be held at the earliest possible time, taking precedence over all matters except older matters of the same character and trials pursuant to 18 U.S.C. §3161.

If I may be of any assistance to the Subcommittee or the Committee, please do not hesitate to contact me.

Sincerely,

Harold R. Tyler, Jr.

95 pw 3/16 log

March 17, 1976

Dear Senator:

This will acknowledge receipt and thank you for your March 16 letter to the President concerning the Hart-Scott Antitrust Improvements Act of 1976, S. 1284.

I am pleased to report to you that steps are being taken to work out a meeting for you and Senator Hart to discuss this bill with the appropriate members of the President's staff. You will hear further as soon as possible.

With kindest regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable Hugh Scott
Minority Leader
United States Senate
Washington, D.C. 20510

bcc: w/incoming and memorandum to Philip Buchen for further action

WTK:JEB:VO:vo

HUGH SCOTT
PENNSYLVANIA

RICHARD G. QUICK
ADMINISTRATIVE ASSISTANT

United States Senate

WASHINGTON, D.C. 20510

March 16, 1976

The President
The White House
Washington, D.C.

Dear Mr. President:

As cosponsor of the Hart-Scott Antitrust Improvements Act of 1976, S. 1284. Phil Hart and I have been gratified by your oft-stated and vigorous support of the concept of anti-trust reform.

We have recently received from the Deputy Attorney General, Harold R. Tyler, assurances of your continued support for the major provisions of our bill, especially for the concept of parens patriae and thank you for this vote of confidence. We all know that all who want to see our great free enterprise system thrive and prosper will lend support to this worthwhile and sensible legislation.

Under current law, both the risk of detection for violation of the antitrust laws and the penalties are minimal. The Hart-Scott bill seeks to deter future anticompetitive behavior by enhancing the likelihood of detection and increasing the penalties for violation.

I know you are sensitive to the alternatives to effective enforcement of the antitrust laws--to wit, increased governmental regulation of the economy. Free market forces, rather than conspiracies and other anticompetitive practices, must regulate the price and quality of our goods and services. Otherwise the government, however reluctantly, will step in with its heavy hand to play that role in order to prevent the inevitable abuses. Your own program of regulatory reform and your call for energetic enforcement of the antitrust laws underscore your awareness of the danger inherent in increased governmental control. All who value the free enterprise system share your awareness and concern.

Since we share your concern, Senator Hart and I thought that we should meet with you to learn how we in the Senate might best promote your antitrust reform program. The Senate's patent

and antitrust bills, both an important part of your program, are at critical stages in the legislative process, and we feel that discussions with you at this point would prove fruitful.

With warmest personal regard,

Sincerely,

Hugh Scott
United States Senator

HS/cb

antitrust

MAY 18 1976

May 18, 1975

Dear Senator:

This will acknowledge receipt of your April 30 letter to the President which was received at the White House on May 17, regarding S. 1284.

I wish to assure you it will be called to the President's attention at the earliest opportunity. In addition, it will be shared with the appropriate members of the staff.

With kindest regards,

Sincerely,

William T. Kendall
Deputy Assistant
to the President

The Honorable James A. McClure
House of Representatives
Washington, D.C. 20510

bcc: w/incoming to Edward Schmults - for further handling

WTK:JEB:VO:vo

14 JAMES A. McCLURE
IDAHO

5-17

Cpy S 1284/Negotiated
JM

United States Senate

WASHINGTON, D.C. 20510

April 30, 1976 postmarked 5/14

5/17 Senator's ofc. called WTK's ofc. & said not to be concerned re ltr 4/30 date. It took a few days for the Senator to have an opportunity to sign this letter.

Honorable Gerald R. Ford
President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

mf

The Senate Steering Committee has asked me to write to you concerning S-1284, The Hart Anti-trust Bill. The Committee asked me to do more than specifically express its objections to the bill.

The membership is concerned that there will be no White House position available, as Mr. Friedersdorff has indicated, prior to the beginning of debate on the Senate Floor. Any support we are able to give the Administration will certainly be vitiated by the adoption of such last minute tactics. We hope for a public statement opposing the bill in the near future.

In addition, the Steering Committee finds that in the past its position on substantive issues relative to legislation has been misrepresented or misstated simply because no appropriate spokesman for its position was included in or informed of various changes in position by the principals involved.

In order that you and we may be completely informed with respect to any pending negociations on this bill, we request that no compromise be entered into without prior consultation with and approval of Senator Hruska, the ranking member of the Judiciary Committee who has studied this bill and related matters throughly during his twenty-four years in the Senate.

Thank you for your time and consideration.

Yours respectfully,

James A. McClure

James A. McClure
U.S. Senator

[redacted]

THE WHITE HOUSE

WASHINGTON

File

May 19, 1976

MEMORANDUM FOR: JACK MARSH

FROM: ED SCHMULTS

SUBJECT: Omnibus Antitrust Legislation

Attached is a memorandum from me to Max Friedersdorf summarizing the Administration's principal objections to the Senate omnibus antitrust legislation, S. 1284. In my view, there is a real need to get this summary up on the Hill as soon as possible. The Senate will probably begin voting on S. 1284 on Thursday, May 20, and there is considerable confusion about the Administration's position. For example, Gil Clarke in Senator Griffin's office called me to say that one of Senator Hugh Scott's people had implied that a rather modest amendment to one title of S. 1284 would be sufficient to insure that the President would sign the bill.

The attached memorandum does not break any new ground and merely sets forth in a logical order the President's position as stated in recent letters. I do not believe there is any need or sufficient time to have the memorandum completely staffed out. Please let me know if you agree or if you think the memorandum should be reviewed by the President. By a copy of this covering memorandum I am asking Max to hold up on any use of the memorandum to him until we hear from you.

cc: Dick Cheney
Mike Duval

THE WHITE HOUSE

WASHINGTON

May 19, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: EDWARD SCHMULTS

SUBJECT: Omnibus Antitrust Legislation

A summary of the principal Administration objections to S. 1284, the "Hart-Scott Antitrust Improvements Act of 1976", is as follows:

Title I (Declaration of Policy)

- Although the Administration has not taken a specific position on this title, the policy declaration in some cases is not supportable by economic evidence.

- The policy declaration bears no relation to the other four substantive titles of the bill.

Title II (Civil Process Act Amendments)

The Administration supports these amendments, but opposes

- Authority to issue a civil investigative demand (CID) to acquire information in a federal administrative agency proceeding.

- Access to grand jury materials by the FTC and private plaintiffs in antitrust actions because this would violate privacy and traditional grand jury secrecy.

The Administration favors:

- An express exemption for information gained through use of a CID from the Freedom of Information Act.

Title III (Miscellaneous Provisions)

- The Administration supports only one provision which would expand the jurisdictional reach of Section 7 of the Clayton Act (mergers) to include violations "affecting" rather than "in" interstate commerce, but opposes expanding this to other sections of the Clayton Act, including the Robinson-Patman Act, and the Sherman Act.

- Court award of attorney's fees for injunctive relief under the Clayton Act should be discretionary, rather than mandatory.

- The Administration believes that other miscellaneous unrelated amendments are ill-conceived and lack justification or a showing of need.

Title IV (Parens Patriae)

The President has expressed serious reservations concerning the parens patriae concept in a March 17, 1976 letter to House Minority Leader John Rhodes which is attached to this memorandum. In addition to reservations about the principle, the Administration has also raised concerns regarding specific provisions in the Senate bill.

- The present bill is too broad in its reach and should be narrowed to price fixing violations.

- In view of the substantial increase in antitrust penalties in recent years, awards should be limited to the damages that actually result from a violation. Mandatory treble damage awards are not justifiable in parens patriae suits, since the stiffened criminal penalties now provide effective deterrence for willful antitrust violations.

- The Administration opposes extension of the statistical aggregation of damages approach, beyond parens patriae cases, to private class actions because this is outside the appropriate reach of this legislation.

Title V (Premerger Notification and Stay)

- The Administration supports the provision for notification prior to consummation of very large mergers and acquisitions.

- The Administration is opposed to the stay provisions in Title V which permit the Federal Government to (1) obtain a temporary restraining order, staying a merger for up to 60 days, and (2) then obtain a preliminary injunction, further staying the merger until a decision on the merits, unless, the defendant companies can show the government "does not have a reasonable probability of ultimately prevailing." These provisions reverse the usual burden of proof and give the Federal Government too much discretion to stop and kill mergers and are contrary to fundamental concepts of due process. The Administration prefers instead to retain existing decisional law.

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LETTER BY THE PRESIDENT
TO REPRESENTATIVE JOHN J. RHODES

March 17, 1976

Dear John:

As I outlined to you on Tuesday, March 16, I support vigorous antitrust enforcement, but I have serious reservations concerning the parens patriae concept set forth in the present version of H.R. 8532.

I question whether federal legislation is desirable which authorizes a state attorney general to sue on behalf of the state's citizens to recover treble damages that result from violations of the federal antitrust laws. The states have the ability to amend their own antitrust laws to authorize parens patriae suits in their own courts. If a state legislature, acting for its own citizens, is not convinced the parens patriae concept is sound policy, the Administration questions whether the Congress should bypass the state legislatures and provide state attorneys general with access to the federal courts to enforce it.

In addition to my reservations about the principle of parens patriae, I am concerned about some specific provisions of the legislation developed by the House Judiciary Committee.

The present bill is too broad in its reach and should be narrowed to price fixing violations. This would concentrate the enforcement on the most important antitrust violations.

In addition, the Administration is opposed to mandatory treble damage awards in parens patriae suits, preferring instead a provision which would limit awards only to the damages that actually result from the violation. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, is no longer justifiable given the substantial increases in these penalties in recent years.

The Administration opposes extension of the statistical aggregation of damages, beyond parens patriae legislation, to private class action suits because this is outside of the appropriate reach of this legislation.

Finally, the Administration prefers discretionary rather than mandatory award of attorney's fees, leaving such awards to the discretion of the courts.

During the last two years, the Administration has sought to improve federal enforcement efforts in the antitrust area and the resources devoted to antitrust enforcement have increased substantially. In December 1974, I signed the Antitrust Penalties and Procedures Act which increased maximum penalties from $50,000 to $1 million for corporations and $100,000 for individuals. As I indicated above, I support vigorous antitrust enforcement, but I do not believe H.R. 8532 is a responsible way to enforce federal antitrust laws.

Sincerely,

/s/ Gerald R. Ford

The Honorable John J. Rhodes
Minority Leader
House of Representatives
Washington, D.C. 20515

1976

ANTITRUST LEGISLATION

Question:

As you know, the Senate is currently considering S. 1284, an omnibus antitrust bill. What is your position on this legislation?

Answer:

This measure is a complex proposal which does not lend itself to concise comment. However, permit me to comment briefly on certain key features of the bill.

With certain exceptions, I support the civil investigative demand features of the bill. In this respect, the bill is substantially similar to legislation that I submitted at the beginning of the Congress. These provisions would provide important tools to the Justice Department in enforcing our antitrust laws.

On the other hand, I have serious reservations, as well as specific objections, concerning the so-called parens patriae title of the bill. I am also opposed to that feature of the legislation which would change long standing legal procedures and impose a mandatory stay period in merger cases. While these provisions have been improved, I continue to believe they are unsound and not in the best interests of our economy.

During the last two years I have sought to improve federal enforcement efforts in the antitrust area. For example, in December 1974 I signed a bill which increased the maximum penalties for antitrust violations. However, as I have indicated, in several respects I question whether S. 1284 is a responsible way to vigorously enforce the antitrust laws.

Schmults 6/4/76

THE WHITE HOUSE

WASHINGTON

June 10, 1976

MEMORANDUM FOR: BILL SEIDMAN

FROM: ED SCHMULTS

In accordance with our discussion, attached are a copy of my memorandum to Max Friedersdorf outlining the Administration's principal objections to the Senate omnibus antitrust legislation and a memorandum to me from Joe Sims at Justice summarizing what has happened in the Senate on the various objections.

As you know, the situation has not yet jelled and two possible further compromises are being discussed. One is Senator Griffin's proposal which would provide for (a) single damages in parens suits except in cases of willful price fixing where the damages would be trebled; (b) elimination of all mandatory stay provisions for mergers; and (c) a bar to contingency fees in parens suits based on a percentage of the recovery. The second proposal is being made by Senator Chiles and appears to have some solid business support. Chiles' proposal would limit the use of the statistical aggregation concept for damages in parens suits to only willful price fixing cases. It is unclear today whether the Chiles proposal also includes points (b) and (c) of the Griffin proposal.

cc: Messrs. Buchen, Cannon, Cheney, Friedersdorf, Marsh

THE WHITE HOUSE

WASHINGTON

May 19, 1976

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: EDWARD SCHMULTS

SUBJECT: Omnibus Antitrust Legislation

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The Administration favors:

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- Court award of attorney's fees for injunctive relief under the Clayton Act should be discretionary, rather than mandatory.

- The Administration believes that other miscellaneous unrelated amendments are ill-conceived and lack justification or a showing of need.

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The President has expressed serious reservations concerning the parens patriae concept in a March 17, 1976 letter to House Minority Leader John Rhodes which is attached to this memorandum. In addition to reservations about the principle, the Administration has also raised concerns regarding specific provisions in the Senate bill.

- The present bill is too broad in its reach and should be narrowed to price fixing violations.

- In view of the substantial increase in antitrust penalties in recent years, awards should be limited to the damages that actually result from a violation. Mandatory treble damage awards are not justifiable in parens patriae suits, since the stiffened criminal penalties now provide effective deterrence for willful antitrust violations.

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The Administration supports the provision for notification prior to consummation of very large mergers and acquisitions.

- The Administration is opposed to the stay provisions in Title V which permit the Federal Government to (1) obtain a temporary restraining order, staying a merger for up to 60 days, and (2) then obtain a preliminary injunction, further staying the merger until a decision on the merits, unless, the defendant companies can show the government "does not have a reasonable probability of ultimately prevailing." These provisions reverse the usual burden of proof and give the Federal Government too much discretion to stop and kill mergers and are contrary to fundamental concepts of due process. The Administration prefers instead to retain existing decisional law.

THE WHITE HOUSE

TEXT OF A LETTER BY THE PRESIDENT
TO REPRESENTATIVE JOHN J. RHODES

March 17, 1976

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In addition to my reservations about the principle of parens patriae, I am concerned about some specific provisions of the legislation developed by the House Judiciary Committee.

The present bill is too broad in its reach and should be narrowed to price fixing violations. This would concentrate the enforcement on the most important anti-trust violations.

In addition, the Administration is opposed to mandatory treble damage awards in parens patriae suits, preferring instead a provision which would limit awards only to the damages that actually result from the violation. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, is no longer justifiable given the substantial increases in these penalties in recent years.

The Administration opposes extension of the statistical aggregation of damages, beyond parens patriae legislation, to private class action suits because this is outside of the appropriate reach of this legislation.

Finally, the Administration prefers discretionary rather than mandatory award of attorney's fees, leaving such awards to the discretion of the courts.

During the last two years, the Administration has sought to improve federal enforcement efforts in the antitrust area and the resources devoted to antitrust enforcement have increased substantially. In December 1974, I signed the Antitrust Penalties and Procedures Act which increased maximum penalties from $50,000 to $1 million for corporations and $100,000 for individuals. As I indicated above, I support vigorous antitrust enforcement, but I do not believe H.R. 8532 is a responsible way to enforce federal antitrust laws.

Sincerely,

/s/ Gerald R. Ford

The Honorable John J. Rhodes
Minority Leader
House of Representatives
Washington, D.C. 20515

June 9, 1976

MEMORANDUM FOR: ED SCHMULTS

FROM: JOE SIMS

SUBJECT: Omnibus Antitrust Legislation

Working from your memo of May 19, 1976, to Max Friedersdorf, here is a summary of what has happened on the various objections to S. 1284 set forth in that memo.

Title I (Declaration of Policy)

- There has been no change in the language of Title I. To my knowledge, there are no amendments pending dealing with this Title.

Title II (Civil Process Act Amendments)

- The authority to issue CIDs to acquire information for use in regulatory agency proceedings was deleted by an 82-6 vote (Griffin Amendment #1771-6/8).

- The provisions broadening access to grand jury materials have been substantially modified by an 89-1 vote. The modified language would allow access only when a guilty or nolo plea is accepted in a criminal proceeding, and then only after the proceeding is completed and only as to the material provided by the defendant or its officers and employees. This is probably a 65-75% move toward the Administration position. (Hart/Scott Amendment #1730-6/8)

- The Senate has adopted an express exemption from the Freedom of Information Act for all CID material by voice vote (Hart/Scott Amendment #1728-6/3).

Title III (Miscellaneous Provisions)

- The expansion of jurisdiction provisions have been fully confirmed to the Administration position by voice vote (Hart/Scott Amendment #1765-6/3).

- There has been no change in the provision calling for mandatory, rather than discretionary, attorney fees in injunctive actions, and there is, I believe, no pending amendment on this point.

- The other miscellaneous provisions have either been deleted or modified in accordance with Administration positions.

Title IV (Parens Patriae)

- The scope of the parens patriae provision has been narrowed from the Sherman Act to "per se" violations of Section 1 of the Sherman Act including price fixing and fraud on the patent office (a conduct-oriented Section 2 violation). This is as narrow as it could be without fully meeting the Administration's position of price fixing only.

- The damage provisions have not been changed, although Hart/Scott are apparently willing to drop from mandatory treble damages to single damages for everything except price fixing and patent fraud.

- The use of statistical aggregation in private class actions has been deleted by voice vote (Griffin Amendment #1768-6/7).

Title V (Premerger Notification and Stay)

- The stay provisions were substantially narrowed to now provide only for a 30-day automatic temporary restraining order, with an extension for good cause only to a maximum of another 30 days. The reverse burden of proof language was deleted. Voice vote (Mathias Amendment #1747-6/3).

JUN 11 1976

THE WHITE HOUSE

WASHINGTON

June 10, 1976

MEMORANDUM FOR: BILL SEIDMAN

FROM: ED SCHMULTS

SUBJECT: Senate Omnibus Antitrust Legislation

This will supplement the memorandum I sent to you earlier today. Senator Hruska has just called me to say that he has met with Senators Allen, Chiles, Byrd, Hart, Javits, Percy, Kennedy and others and that they have all agreed on the so-called Chiles compromise proposal. The Senators were on their way to Senator Mansfield's office and it appears likely that the antitrust bill will soon pass the Senate, perhaps later today.

Basically, the Chiles compromise would (a) limit the use of the statistical aggregation concept for damages in parens patriae suits to only price fixing and fraud on the Patent Office cases; (b) eliminate all mandatory judicial stay provisions for mergers; and (c) bar contingency fees in parens patriae suits if based on a percentage of the recovery.

To sum up, it appears to me that the Senate has now met nearly all of the President's specific objections to the various titles of the ominbus bill. The Civil Process Act Amendments in Title II have been supported by the Administration. Our only problem in Title V involved the stay provisions and they have been eliminated. The most controversial of the titles, Title IV (parens patriae), has been substantially narrowed along the lines suggested by the President. However, as you know, the President has expressed serious reservations about the basic concept of parens patriae.

cc: Messrs. Buchen, Cannon, Cheney, Friedersdorf, Marsh